

EXHIBIT “4”

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-11625-RWZ

*****X

JOAN CHARLES

Plaintiff

vs.

OCWEN FEDERAL BANK, FSB; OCWEN FINANCIAL
CORPORATION; MASSACHUSETTS PROPERTY INSURANCE
UNDERWRITERS ASSOCIATION; and ONE CALL
INSURANCE AGENCY, INCORPORATED
Defendants

*****X

DEPOSITION OF JOAN CHARLES, a

witness called on behalf of the Defendant, Ocwen
Federal Bank, FSB, pursuant to the applicable provisions
of the Federal Rules of Civil Procedure, before Camille
Macomber, Registered Professional Reporter and Notary
Public within and for the Commonwealth of
Massachusetts, at the Law Offices of Michienzie &
Sawin, LLC, 745 Boylston Street, Boston, Massachusetts,
on Wednesday, September 20, 2006, commencing at
10:20 a.m.

SHEA COURT REPORTING SERVICES
ONE UNION STREET, SECOND FLOOR
BOSTON, MASSACHUSETTS 02108
(617)227-3097

1 Call never sent out notice of premium to me. It
2 was --

3 Q Which document are you referring to?

4 A This one.

5 Q Exhibit 3.

6 A 3, okay. It was -- what do they call the
7 insurance itself?

8 MR. HOYT: If you don't know, I won't
9 be able to help you.

10 Q The actual insurance company?

11 A This is the agent. This is the agent.

12 Q Did you receive something from MPIUA, the
13 Massachusetts Property Insurance Underwriting
14 Association?

15 A Yes.

16 Q Exhibit 4, is that what you received?

17 A No, what I received from the insurance company
18 was something like this where you tear off and
19 send in the payment to the bank.

20 Q So you received something like Exhibit 3?

21 A Yes.

22 Q I'm going to refer to the Massachusetts Property
23 Insurance Underwriting Association as MPIUA.

24 MR. WHOLLEY: That's fine.

1 Q So MPIUA, as far as you know, sent you
2 Exhibit 3?

3 A Yes.

4 Q The exhibit that you have in front of you?

5 A Yes.

6 Q When you received that, what did you do with
7 that document? What action did you take in
8 response to receiving that document, if any?

9 MR. HOYT: Objection.

10 Q From time to time there will be objections from
11 counsel in the room, but you need to answer the
12 question unless your counsel instructs you to do
13 otherwise.

14 A Okay. I mailed it out to Ocwen Bank.

15 Q What address did you mail it to?

16 A Behind Ocwen statement that they sent the
17 payment, they have an address to send the
18 insurance to, and an address to send the
19 property taxes to. That was the address that I
20 sent it to where the insurance to go to.

21 Q How did you send it? What way did you send it,
22 regular mail?

23 A Regular mail.

24 Q Did you keep a copy of what you sent to Ocwen?

1 fire adjuster.

2 Q What day was that, do you recall?

3 A A Monday, I got there like 10:30 a.m., and he
4 went to the insurance later on in the day. Then
5 he called my daughter and told my daughter to
6 tell me that the property has no insurance.

7 Q Was this on the day of the fire or on a
8 different date?

9 A The Sunday night 12 o'clock was the fire, which
10 meant is the 2nd of February, which is the
11 Monday. Monday was the 3rd. Sunday night the
12 fire took place, the Monday.

13 Q Sunday night the fire took place, Monday?

14 A Yes.

15 Q So then on that Monday, the day after the fire
16 was when you realized you didn't have insurance?

17 A Yes, sir.

18 MR. HOYT: If I can try to clarify
19 because I'm sure this is going to come up a lot.
20 I believe the fire report indicated that it was
21 more like 2 a.m., so it would have been the 3rd.
22 We have been talking about the 2nd. I don't
23 have a calendar in front of me, but if memory
24 serves --

1 A It was 12 o'clock, midnight. It was dead
2 midnight. The Sunday was the Super Bowl, and
3 they say it was like 15 degrees below zero that
4 night with the windchill.

5 MR. HOYT: Maybe we will be better
6 served to kind of designate, to avoid confusion
7 to say what date --

8 A Between the 2nd to the 3rd. But when the fire
9 occurred midnight, Monday in the day, that's
10 when the guy told me I had no insurance on the
11 property.

12 Q Did you take any action in response to finding
13 out that you had no insurance?

14 A I called Mr. Salent.

15 Q What did you tell him?

16 A I said Mr. Salent, this is what happened, and
17 the guy went to the insurance and he told him
18 that the property had no insurance. Mr. Salent,
19 in turn, told me to send a check down with my
20 son to the insurance downtown. My son did leave
21 with the check. My daughter gave him a check
22 for \$500. When he got there, this is what he
23 told me, he got there minutes before closing
24 time, and the lady told him that they are not

1 receiving any payment anymore for that day.

2 Q What office was that?

3 A That's the Mass. Property just opposite
4 immigration down there. I think somewhere
5 upstairs is where the office is.

6 Q In Boston?

7 A Yes, Massachusetts Underwriter, yes.

8 Q So it was the MPIUA, the insurance company?

9 A Yes.

10 Q Your son went there with a check?

11 A Yes, sir.

12 Q What happened?

13 A They did not accept it because the lady said
14 they were not accepting any more payments for
15 the day.

16 Q How do you know that?

17 A When my son came back he told me.

18 Q Did you have any other discussions with
19 Mr. Salent about what you should do, if
20 anything?

21 A I called back Mr. Salent and I told him, and he
22 told me -- he gave me Mr. Petrocelli's number,
23 Paul Petrocelli's number.

24 Q Who is Paul Petrocelli?

1 address; correct?

2 A Yes, at the post office.

3 Q Has that been the case from the time you placed
4 that forwarding order all the way up until the
5 present? In other words, do you still go to the
6 post office to pick up your mail that was sent
7 to the Ditson Street address?

8 A No, no, no. All the mails come to the new
9 address. About two weeks after, they started
10 sending it to the new address.

11 Q Now, you have Exhibit 3 in front of you still?

12 A Yes.

13 Q When you received that, did you notice that it
14 stated expiration date 1/8/04 on it?

15 A 1/8/04?

16 MR. HOYT: Is the question that back
17 in '04, did she?

18 MR. CHAPMAN: Yes.

19 Q Let me ask it again. When you received Exhibit
20 3 in the mail in early December '03, did you
21 notice that the document said "Expiration Date
22 1/8/04."

23 A I really specifically cannot tell you I remember
24 the date, but I am a person when I receive a

1 bill, and as soon as I receive something like
2 these things, I mail it out the same time. I do
3 not put things down to send it out. I do just
4 what I have to do.

5 Q I just want to get the best understanding I can.
6 What was your understanding as to what
7 expiration date 1/8/04 meant?

8 A I know what it means, that if this bill was not
9 paid by that time, my insurance would be
10 canceled.

11 Q And that would have been your understanding in
12 early '03?

13 A Oh, yes.

14 Q Early December '03?

15 A Yes.

16 Q Did you do anything between January 8, '04 and
17 the time of the fire to determine whether or not
18 your insurance had been paid?

19 A No, I did not ask anyone or call anyone.

20 Q Now, you said earlier that sometime after your
21 lawsuit was filed, you did give a statement
22 under oath to Assurant Group; correct?

23 A Yes.

24 Q That was a statement that was being transcribed

1 or attempted to be paid by Ocwen to MPIUA?

2 A Yes.

3 Q And you understand that they attempted to make
4 that payment after the fire loss in February 2,
5 2004?

6 A Yes, sir.

7 Q Then you did get Exhibit 25, which advised you
8 that MPIUA was not accepting that check?

9 A Yes, sir.

10 Q For the reasons we have discussed?

11 A Yes.

12 Q Now, going back to Exhibit 3. As I understand
13 your testimony, when you received this in early
14 December of 2003, you understood that unless
15 MPIUA received a premium payment, which is
16 indicated on here, a minimum of \$476.56, unless
17 they received that by January 8 of 2004, your
18 coverage with MPIUA would lapse. You understood
19 that; right?

20 A Yes, I know that.

21 Q That's why, just like you had done the year
22 prior in December of '02, again in December of
23 '03, you sent this thing to Ocwen?

24 A To Ocwen, yes, I did.

1 Q That was your custom and practice; right?

2 MR. MICHIEENZIE: Objection.

3 A Yes.

4 Q You understood that you'd get this notice, you
5 needed to send it to Ocwen in order to get your
6 renewal premium paid to keep you coverage in
7 effect?

8 MR. MICHIEENZIE: Objection.

9 MR. HOYT: Objection.

10 A Yes.

11 Q You didn't expect Mr. Salent to make that
12 payment; right?

13 A No. What I expected of Mr. Salent --

14 Q I'm not going to get into anything else. You
15 didn't expect him to make the payment?

16 A No.

17 Q You didn't expect MPIUA to pay itself?

18 A No.

19 Q You expected the bank to make the payment?

20 A Yes.

21 Q You knew that if the payment wasn't made, there
22 would be no coverage in effect on and after
23 January 8, 2004?

24 A Yes.

1 Q Now, at any point in time after you received
2 Exhibit 3 in early December of 2003 and the date
3 of the fire, did you have any communications
4 with MPIUA?

5 A No, sir.

6 Q When was the first occasion you or anyone on
7 your behalf had communication with MPIUA after
8 the fire?

9 A Mr. Salent told me to send a check for \$500 with
10 anybody. I couldn't go. I sent it with my son.

11 Q When was that?

12 A Well, it was the Monday afternoon of the fire.

13 Q So it was the day of the fire?

14 A Yes, took place at midnight, and he went in the
15 day.

16 Q So your son attempted to go pursuant to
17 Mr. Salent's instructions, at least, that's what
18 you're claiming?

19 A Yes.

20 Q He attempted to go to MPIUA and pay a premium
21 after the fire had occurred?

22 A Yes.

23 Q And MPIUA wouldn't accept that; is that right?

24 A Yes, sir.